

(1996) 11 AHC CK 0007
In the Allahabad High Court
Case No : C.M.W.P. No. 41404 of 1993

R.K. Malik and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 11A, 16, 17, 17(1)

Citation : (1996) 11 AHC CK 0007

Hon'ble Judges : B.M. Lal, J;B.K. Sharma, J

Bench : Division Bench

Advocate : Ravi Kant, for the Appellant;

Final Decision : Allowed

Judgement

B.M. Lal and B.K. Sharma, JJ.—The claimants/Petitioners R. K. Malik and others have filed this petition under Article 226 of the Constitution challenging the impugned order dated 14th May, 1993 (contained in Annexure 2 to the writ petition) passed by the Land Acquisition Directorate, Lucknow.

2. Short facts leading to this petition lie in narrow compass and they are as under:

Petitioner's land have been acquired under the provisions of the Land Acquisition Act (for short the Act) by issuing necessary Notifications under Sections 4, 6, 9 and 17, etc. of the Act and pursuant to the same possession of Petitioner's land was taken over by the Government as long back as on 11.6.91 but no award as contemplated u/s 11 of the Act determining the compensation was passed even after lapse of more than 5 years. However, it is submitted that the Special Land Acquisition Officer prepared the award in consonance with the provisions of Section 11 of the Act in the month of May, 1993 and sent the same for approval to the Land Acquisition Directorate but vide impugned order dated 14th May, 1993, the Land Acquisition Directorate rejected the same and thereby the

Petitioners stand deprived of their property without getting the compensation for the same. Hence Petitioners have approached this Court under Article 226 of the Constitution for redressal of their grievances.

3. Learned standing counsel considering the facts and circumstances of the case that the land in question has been acquired and possession of the same has already been taken over by State but no compensation has been paid till date, did not raise strong objections but submitted that the Land Acquisition Directorate has every authority under law to pass appropriate orders.

4. Having heard learned Counsel for the parties we are of the opinion that this Petitioner deserves to be allowed. In Satendra Prasad Jain and Others Vs. State of U.P. and Others, , their Lordships of Apex Court have ruled [vide Paras 16 and 17 of the judgment) as under:

16. Further, Section 17(3A) postulates that the owner will be offered an amount equivalent to 80% of the estimated compensation for the land before the Government takes possession of it u/s 17(1). Section 11A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80% of the estimated compensation.

17. In the instant case, even that 80% of the estimated compensation was not paid to the Appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the 1st Respondent. It is, at any rate not open to the third Respondent, who, as the letter of the Special Land Acquisition Officer dated 27th June, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken illegally and that, therefore the said land has not vested in the first Respondent and the first Respondent is under no obligation to make an award.

5. In the instant case before us, the remarkable aspect of the matter is that the Petitioners were not only deprived of their title over the land which was the only source of their livelihood as long back as on 11.6.1991 but were also divested from the possession of the same by virtue of Notifications under Sections 16 and 17 of the Act and despite that even after expiry of complete 5 years, the State could not ensure payment of compensation to them in accordance with the provisions of Section 11 of the Act. This is now the welfare State has behaved with its poor peasants. The welfare State is always expected to be fair and reasonable and to behave in a Just and proper manner and not in a manner in which a dishonest litigant behaves. Under the provisions of the Act, a statutory duty cast on the State is to pay the compensation as early as possible and atleast 80% of the estimated compensation must have been paid before taking over of the possession but in the instant case even after 5 years of the taking

over of possession no compensation has been paid, on the other hand the award proposed by the Special Land Acquisition Officer has been disapproved.

6. In the considered opinion of this Court in the instant case where the possession of the land had been taken over long back and the land owners have been deprived of their valuable land and undue delay is caused in making payment of the compensation, the actions of the Respondents are not in consonance with the aims and objects for which the Act is enacted and in such cases the public officers have to be accountable to public in discharge of their statutory duties. No doubt it does not tell upon their integrity but certainly reflects upon their efficiency and sense of responsibility towards the nation and public at large. In such cases public officers are liable to be dealt with suitably for non-feasance and negligence or slackness in discharge of their official duties. In such matters the concept of State immunity will not come to rescue them and they are personally liable to compensate the claimants.

7. This being so, the Petitioners are entitled to get compensation as early as possible. The Petitioners are further entitled to get statutory interest on the amount of compensation from the date of taking over of the possession of their land. Since the right to get interest accrued to the Petitioners on account of undue delay in payment of compensation hence the amount of interest payable to the Petitioners shall be recovered from the officers who are responsible for the delay caused in the matter.

8. In the result this petition succeeds and is allowed with costs. The impugned order dated 14.5.93 (Annexure 2 to the writ petition) passed by the Respondent No. 2 is hereby quashed and the Respondents are directed to pass appropriate award within 3 months from the date of presentation of certified copy of this order before them. The amount of compensation shall carry interest and other benefits provided statutorily. The amount of interest only shall be recovered from the officers personally, who are responsible for the delay caused in the matter. The cost of petition is assessed Rs. 5,000 (Rupees five thousand only) which shall also be recovered from the said officers. The amount on interest and cost of petition so recovered from the said officers shall be paid to the Petitioners within 3 months.